

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

ANTONIO AGUILAR-LOPEZ,

Defendant/Movant.

No. 2:10-CR-06018-EFS-1

[No. 4:17-CV-05013-EFS]

**ORDER DENYING CONSTRUED MOTION
FOR RECONSIDERATION**

CLERK'S OFFICE ACTION REQUIRED

On March 7, 2017, Defendant/Movant Antonio Aguilar-Lopez filed a "Motion in Reply to Court's 'Order' Dated February 17th, 2017 and Request for Appointment of Counsel," ECF No. 277. In that filing, Mr. Aguilar-Lopez argues that this Court erred in finding that his latest motion under 28 U.S.C. § 2255, ECF No. 274, is a "successive motion." As such, the Court construes ECF No. 277 to be a Motion for Reconsideration.

Reconsideration is an "extraordinary remedy" that should not be granted absent "highly unusual circumstances," such as where (1) newly discovered evidence has emerged, (2) the court committed clear error, or (3) there was an intervening change in the controlling law. *Kona Enterprises v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). Here, Mr. Aguilar-Lopez has not demonstrated such unusual circumstances.

1 As such, and for the reasons stated in the Court's prior order, ECF
2 No. 276, the Court's ruling will stand.

3 The Court has already transferred Mr. Aguilar-Lopez's § 2255 motion
4 to the Ninth Circuit Court of Appeals. See ECF No. 276. In an effort
5 to facilitate review of Mr. Aguilar-Lopez's application for leave to
6 proceed with a successive § 2255 motion, the Court will direct the
7 Clerk's Office to forward Mr. Aguilar-Lopez's latest filing to the Ninth
8 Circuit Court of Appeals as well. However, Mr. Aguilar-Lopez is again
9 advised that **the transfer will not by itself constitute compliance with**
10 **28 U.S.C. § 2255 and Ninth Circuit Rule 22-3.** Mr. Aguilar-Lopez must
11 still file an application for leave to proceed with the Ninth Circuit
12 and make the showing required by § 2255. Only upon approval by the
13 Ninth Circuit can this Court consider the merits of Mr. Aguilar-Lopez's
14 arguments and his latest request for counsel.

15 Accordingly, **IT IS HEREBY ORDERED:**

16 **1.** Mr. Aguilar-Lopez's "Motion in Reply to Court's 'Order' Dated
17 February 17th, 2017 and Request for Appointment of Counsel,"
18 **ECF No. 277, is CONSTRUED** as a Motion for Reconsideration
19 and is **DENIED.**

20 **2.** The Clerk's Office is directed to forward this Order along
21 with ECF No. 277 to the Clerk of the Ninth Circuit Court of
22 Appeals.

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1 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
2 Order and provide a copy to Mr. Aguilar-Lopez and the United States
3 Attorney's Office for the Eastern District of Washington.

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5 **DATED** this 10th day of March 2017.

6
7 s/Edward F. Shea
8 EDWARD F. SHEA
9 Senior United States District Judge
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